UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line Corporation — Docket No. RP07-178-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued March 22, 2007)

1. On February 20, 2007, Transcontinental Gas Pipe Line Corporation (Transco) filed tariff sheets[1] to add section 55, which pertains to the reservation of capacity, to the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Proposed section 55.1 sets forth the conditions under which Transco may enter into a prearranged deal for service to start at a specific date up to three years in the future. Proposed section 55.2 sets forth the conditions under which Transco may reserve capacity for an upcoming pipeline expansion project. For the reasons set forth below, the Commission grants waiver of the thirty-day notice period contained in section 154.207 of the Commission's regulations[2] and accepts the tendered tariff sheets effective March 22, 2007, as requested, subject to the conditions discussed herein.

I. The Instant Filing

2. Transco filed the tariff sheets for the purpose of adding a capacity reservation provision to its tariff. Sections 55.1 and 55.2 pertain to (1) currently available unsubscribed capacity or (2) subscribed capacity expected to become available at some future date which is not subject to a right-of-first-refusal (ROFR) by the current capacity holder or for which the current capacity holder has not exercised its ROFR.

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[1] Ninth Revised Sheet No. 250A, Original Sheet No. 374V and Original Sheet No. 374V.01 to Transco's FERC Gas Tariff, Third Revised Volume No. 1.

[2] 18 C.F.R. § 154.207 (2006).

3. Proposed section 55.1 sets forth the conditions under which Transco may enter into a prearranged deal for service with a shipper willing to execute a service agreement to start at a specific date up to three years in the future. As soon as the prearranged deal is entered into, but before capacity is actually awarded or reserved, Transco will post the deal on its website as part of an open season bidding process to permit other parties an opportunity to bid on the capacity. The open season bidding process will take place even if the capacity has already been subject to an open season and is currently posted as available. Any third party who meets Transco's creditworthiness standards, as set forth in section 32 of its GT&C, wishing to subscribe to the firm capacity, whether for service commencing immediately or in the future, can participate in the open season. The bids will be evaluated on a net present value (NPV) basis, taking into account the time value of the delay in revenue under a bid for firm service to commence in the future. The prearranged shipper will have 15 days to match the highest NPV bid. If the prearranged shipper matches the highest NPV bid, the prearranged shipper will be awarded the capacity, and if the prearranged shipper does not match the highest bid, the capacity will be awarded to the shipper providing the highest NPV bid. Once capacity for service in the future has been reserved, Transco will make the capacity available on an interim basis without a ROFR.

4. Proposed section 55.2 sets forth the conditions under which Transco may reserve capacity for an upcoming pipeline expansion project. Transco may reserve capacity only for a future expansion project for which an open season has been held or will be held within one year of the date Transco posts the capacity as being reserved. Transco will make the capacity available in accordance with section 49 of its GT&C prior to reserving the capacity. Once capacity is reserved, Transco will make the capacity available on an interim basis without a ROFR. If the reserved capacity is insufficient to satisfy the requirements of an expansion project, then Transco will conduct a reverse open season for the turn back of capacity no later than 90 days after the close of an open season for the expansion project and reserve any capacity obtained through the reverse open season for the expansion project.

5. Proposed section 55.2(a) provides that Transco may reserve capacity for a future expansion project up to <u>two</u> years prior to filing for a certificate application for the project in question. Transco recognizes that the Commission has required other pipelines proposing to reserve capacity for an expansion to file for a certificate application within one year of the reservation of capacity. However, Transco states that the Commission has adopted new certificate filing procedures and requirements that require a greater lead time since the Commission adopted the one-year limit in the 1990's. Transco argues that the long lead time required for filing certificate applications for expansion projects, particularly LNG-related expansions, makes the one-year capacity reservation time period impractical. Transco states that the Commission has adopted a pre-filing process

and, pursuant to section 153.6 of the Commission's regulations, a minimum of 180 days must be allowed for the pre-filing process, which is now mandatory for LNG projects. Transco further states that Commission staff suggests that pipelines allow at least seven to eight months for this process and that Transco's experience has shown that this process can take from nine months to a year.

6. Transco argues that the requirement that an applicant submit applications for all required federal permit authorizations before, or contemporaneously with, the filing of the certificate application increases the lead time required to submit a certificate application by three months due to the detailed design drawings and maps that must be included in the applications for federal permit authorizations. Transco further argues that an open season for a future expansion project is usually from thirty to sixty days and that the open season takes place prior to initiating the pre-filing process. Transco contends that the results of the open season are important factors in planning for the scope and cost of the project which can easily require five months or longer to finalize. Transco asserts that, in situations where the terms of the open season depend on the assured availability of the reserved capacity, the reservation of capacity will need to occur prior to the initiation of the open season. Finally, Transco argues that pipelines must provide LNG project participants with as much certainty as possible, early in the project planning cycle, with respect to the availability of downstream capacity.

II. Notice, Interventions, Comments and Protests

7. Public notice of Transco's filing was issued on February 23, 2007, with interventions, comments and protests due as provided under section 154.210 of the Commission's regulations (18 C.F.R. 154.210 (2006)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. Indicated Shippers[3] filed a protest and comments were filed jointly by the Transco Municipal Group (TMG) and the Municipal Gas Authority of Georgia (Gas Authority).

[3] Indicated Shippers consists of ConocoPhillips Company, Chevron U.S.A. Inc., and Shell Offshore Inc.

8. On March 12, 2007, Transco filed an answer to the protest and comments (answer).[4] The protest, comments, and answer are discussed below.

III. Discussion

9. Transco's revised tariff sheets are accepted to be effective March 22, 2007, subject to conditions. Transco's proposals to reserve capacity for expansion projects and to enter prearranged deals with future commencement dates are generally consistent with Commission policy, as discussed below.

Section 55.2

10. Transco's proposal to reserve capacity for future expansions is consistent with Commission policy with one exception. Transco's proposal would allow it to reserve capacity for up to two years prior to submitting the certificate application for the expansion project. Transco asserts that the long lead time for filing certificate applications for expansion projects, particularly LNG-related expansions, makes the one-year period to reserve capacity currently in Commission approved pipeline tariffs impractical. However, the Commission has stated that capacity may be reserved for only twelve-months prior to filing for certificate approval. Because a reservation of capacity results in a waiver of any interim shipper's ROFR, the Commission has required the one-year limit to assure that "the reservation of capacity occurs only as part of a realistic expansion plan."[5] Furthermore, the Commission has stated that allowing a pipeline to reserve capacity only for one year before filing for a certificate is a safeguard that ensures that the pipeline is not reserving capacity to exercise market power.[6] Accordingly, the Commission is not willing to permit a pipeline to include in its tariff a blanket provision authorizing reservation of capacity for an expansion for up to two years before filing a certificate application, rather than the one year now authorized. Therefore, Transco is directed to eliminate this two-year period and incorporate a provision which allows Transco to reserve capacity for up to one year prior to filing the certificate application for the expansion project. However, if Transco believes that it needs an extension of time to

[4] Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2006), answers to protests are not accepted unless otherwise ordered by the decisional authority. The Commission will accept Transco's answer because it provided information that assisted in our decision making process.

[5] *Northern Natural Gas Co.*, 105 FERC ¶ 61,057 at P 18 (2003).

[6] *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141 at P 9 (2004).

file the certificate application for a particular project for which it has reserved capacity, then Transco may request that the Commission waive this one-year tariff limit for that project and the Commission will evaluate the waiver request based on the circumstances and the support which Transco provides for the requested waiver.

Section 55.1

11. Indicated Shippers argue in their protest that Transco's proposal to enter into prearranged deals for future service should be modified to avoid the potential for undue preferences. Indicated Shippers urge the Commission to require that Transco post the capacity available for such deals prior to entering into the prearranged deal. Indicated Shippers assert that authorizing such prearranged deals without prior posting would give Transco the opportunity to give undue preference to certain shippers and the prearranged shipper would retain a substantial advantage over all bidders because the prearranged shipper would be given the opportunity to take the capacity by simply matching the highest bid. In its answer, Transco states that, if the Commission deems it necessary, Transco is willing to add language to proposed section 55.1 to expressly state that Transco will not enter into any prearranged deal under that section for capacity that has not been previously posted as available capacity pursuant to section 49 of the GT&C of its tariff. This additional language would be added at the end of the introductory paragraph in section 55.1.

12. The Commission will require that Transco post the availability of capacity for the prearranged deals prior to reaching such agreements. The Commission-approved tariff of Gas Transmission Northwest Corp. (GTN) contains such a posting requirement for capacity available for prearranged deals.[7] Therefore, Transco is directed to file similar revised tariff sheets stating that it will separately identify on its Internet website all capacity that is anticipated to become available within the next thirty-six months and that it will not enter into any prearranged deals for capacity that has not previously been posted on its Internet website.

13. In their comments, TMG and Gas Authority contend that while proposed section 55.1 states that the seller will post the prearranged deal "as part of an open season bidding process in accordance with the provisions of section 49 of these General Terms and Conditions," it is unclear if Transco will apply section 49.2 in those circumstances. Section 49.2 provides that, if bids are evaluated based on NPV and the seller receives two or more bids of equal value then the best bid is the bid with the shortest term. TMG and Gas Authority seek clarification of the ability of prearranged deal shippers to match the

[7] FERC Gas Tariff Third Revised Volume No. 1-A, First Revised Sheet No. 127.

highest NPV bid by a third party after notification of the prearranged deal. TMG and Gas Authority argue that, assuming bids at the maximum rate, the prearranged deal shipper must have the flexibility to match the highest NPV bid. TMG and Gas Authority assert that the tariff should be clarified to indicate that the prearranged deal shipper, in exercising its matching right, should have the right to advance the commencement date of its capacity request, to increase its bid, or to extend the contract term in order to increase the NPV.

14. In its answer to TMG and Gas Authority's comments, Transco states that section 55.1(c) expressly states that if the prearranged shipper matches the highest NPV bid as a result of such open season offering under section 49, the prearranged shipper will be awarded the capacity. Transco therefore asserts that the tie-breaking methodology under section 49.2 would not apply to the prearranged shipper under section 55.1. Transco further asserts that the prearranged shipper is not limited by Transco's proposed tariff provision in the manner by which it may match the best bid. Transco contends that the Commission has determined that, in an NPV bid evaluation, the shipper may match the best bid through a combination of rate and term that best represents the value it places on the capacity. Transco further contends that, therefore, subject to the conditions set forth in the open season, the prearranged shipper may revise its prearranged bid in order to match the NPV of the best bid. Transco concludes that, since this right is inherent in any NPV bid evaluation process, no clarification of Transco's proposed tariff language is necessary. As explained by Transco, we believe this requested clarification is not necessary. Therefore, the request for clarification by TMG and Gas Authority is denied.

Other Issues

15. TMG and Gas Authority state that, while proposed section 55 provides that capacity can be reserved provided that it is not subject to a right of first refusal or the current capacity holder does not exercise the right of first refusal, it does not recognize the special rights of Transco's firm transportation (FT) conversion sales shippers. Transco's FT conversion customers are its former bundled sales customers who converted to FT service under Rate Schedule FT pursuant to settlement agreements approved by the Commission in 1991 prior to the issuance of Order No. 636. Those settlements provide that Transco may not terminate the FT conversion shipper's service except pursuant to a case-specific abandonment authorization under section 7(b) of the NGA. As TMG and Gas Authority point out, the Commission has stated that, as a result, "a ROFR is not needed to protect the historical service of the FT conversion shippers, because those services are protected by the FT conversion shippers' contractual rights requiring Transco to file an individual abandonment application with the Commission

pursuant to NGA section 7(b) before terminat[ing] their service."[8] TMG and Gas Authority request that the proposed tariff language be clarified to state that capacity subject to NGA section 7(b) abandonment authorization protection cannot be reserved under section 55 and no such capacity should be available under section 55 unless and until the Commission issues an order granting abandonment for such capacity.

16. Transco replies that proposed section 55 defines the capacity that Transco may reserve as capacity that is "either currently available unsubscribed capacity or capacity expected to become available at some future date." Transco contends that capacity subject to section 7(b) abandonment could be considered to be capacity that is "expected to become available" if the shipper holding the capacity has unequivocally indicated to Transco that the shipper has elected, pursuant to the terms of the underlying service agreement, to no longer receive service under such agreement. Transco states that such capacity would become available only upon the effective date of the abandonment approval granted by the Commission. Transco asserts that it would offer that capacity to other shippers pursuant to section 49 prior to the abandonment approval date in order to prevent a lag between when the abandonment of such service becomes effective and such capacity is subscribed. Transco submits that, if there are no takers for such capacity pursuant to that offering, it should be able to reserve such capacity for a prearranged deal. Transco further submits that such service would still have the protections afforded by section 7(b), and Transco would still be obligated to provide the transportation service for that shipper until abandonment approval has been granted by the Commission. Transco argues that excluding such capacity from being eligible for reservation under section 55 would neither afford the Commission any greater oversight over Transco's application of section 55 nor offer shippers any greater protections than exist under the status quo. Transco further argues that the only result of such a change to section 55 would be to hinder Transco's ability to sell the capacity to a willing shipper under a prearranged deal.

17. As explained by Transco, transportation service would be provided for capacity subject to NGA section 7(b) protection until abandonment authorization is granted and becomes effective. Based on Transco's explanation, the requested clarification by TMG and Gas Authority is denied as unnecessary.

18. Finally, the TMG and Gas Authority argue that to the extent that Transco reserves or sells capacity with a future commencement date and this action results in capacity being unsubscribed in the short-term, the Commission should place Transco at risk for any unsubscribed interim capacity. Transco responds that it would have no incentive,

[8] *Transcontinental Pipeline Corp*., 106 FERC ¶ 61,299, at P 12 (2004), *order on reh'g*, 112 FERC 61,170 (2005).

economic or otherwise, to reserve capacity for a date to commence in the future if it could sell the capacity sooner on similar terms. Transco further responds that, as recognized by TMG and Gas Authority, this issue may be addressed in the context of a general NGA section 4 rate case proceeding. Transco argues that such a proceeding would be a more appropriate forum for this issue.

19. As the Commission recently found, in response to a similar argument in Columbia Gulf Transmission Company's proceeding in Docket No. RP07-172-000,[9] this is a rate matter that can be addressed in a subsequent rate case where all parties will be free to raise this issue.

The Commission orders:

(A) Waiver of the Commission's thirty-day notice period contained in section 154.207 of the Commission's regulations is granted and the Commission accepts the tariff sheets listed in footnote 1 of this order to be effective March 22, 2007, subject to the conditions discussed in the body of this order and the ordering paragraph below.

(B) Transco is directed to file revised tariff sheets consistent with the discussion contained in the body of this order within thirty days of the date this order issues.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

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[9] *Columbia Gulf Transmission Co.*, 118 FERC ¶ 61,194 (2007) at P 13.